

U.S. District Court
Southern District of Texas

OCT 1 5 2003

Michael N. Milby, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re ENRON CORPORATION SECURITIES
AND ERISA LITIGATIONS

Civil Action No. H-01-3624
(Consolidated)

This Document Relates To:

CLASS ACTION

MARK NEWBY, et al., Individually and On
Behalf of All Others Similarly Situated,

Plaintiffs,

vs.

ENRON CORP., et al.,

Defendants.

THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA, et al., Individually and On
Behalf of All Others Similarly Situated,

Plaintiffs,

vs.

KENNETH L. LAY, et al.,

Defendants.

PAMELA M. TITTLE, et al.,

Plaintiffs,

vs.

ENRON CORP., an Oregon corporation, et al.,

Defendants.

DECLARATION OF HELEN J. HODGES IN SUPPORT OF
FINAL APPROVAL OF PARTIAL SETTLEMENT

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I, HELEN J. HODGES, declare as follows:

1. I am an attorney, duly licensed by the State of California and am admitted to the Bar of this Court *pro hac vice*. I am a member of the firm of Milberg Weiss Bershad Hynes & Lerach LLP (“Milberg Weiss”), counsel to the Court-appointed Lead Plaintiff in the *Newby* and *WSIB* Actions, The Regents of the University of California. I make this declaration in support of final approval of the settlement entered into with Andersen Worldwide Societe Cooperative (“AWSC”), Arthur Andersen (United Kingdom), Arthur Andersen-Brazil, and Andersen Co. (India) (the “Settling Defendants”).

2. This settlement arose out of the Court-ordered mediation sessions whereby the parties attempted to reach a global resolution with all of the Andersen entities. On behalf of The Regents, the settlement negotiations with AWSC were conducted primarily by William S. Lerach with the oversight and approval of The Regents. The Regents support this settlement.

3. At the time an agreement-in-principle was reached with the Settling Defendants to resolve this litigation with respect to them for \$40 million, the Settling Defendants had pending motions to dismiss the complaints in these actions. Among other things, the Settling Defendants contended that the Court did not have jurisdiction over them. In addition, AWSC contended that the complaints did not allege that it performed any services at all for Enron. The remaining Settling Defendants each asserted that the complaints did not allege that services performed by them were deficient in any way and did not allege wrongful conduct or knowing participation in the Enron scheme. We were concerned about the possibility that the Court would grant these motions. This concern was reinforced later by the Court’s decision on the remaining motions to dismiss with respect to certain defendants.

4. In addition, the impact on AWSC and its member firms caused by the indictment and subsequent conviction of Arthur Andersen LLP was another factor considered in entering into this

partial settlement. As a result of these events, among other things, AWSC was and is in the process of winding up its affairs and most of the former member firms have entered into arrangements with other accounting firms, are on the brink of bankruptcy, or have already been dissolved.

5. Another issue considered in the course of the negotiations was the proportionate fault provisions of the Private Securities Litigation Reform Act of 1995 ("PSLRA") and the likelihood that even if liability and damages were established against the Settling Defendants, the proportionate fault ascribed to them would be small.

6. For these reasons, among others, I believe that the settlement is fair, reasonable and adequate under the circumstances and should be approved by the Court.

7. Attached hereto as Exhibits 1 and 2 are true and correct copies of Orders entered in *In re M.D.C. Holdings Sec. Litig.* and *In re Software Toolworks, Inc. Sec. Litig.* Both of these Orders approve the use of a portion of the proceeds from a partial settlement for expenses incurred and to be incurred in prosecuting those litigations.

8. Attached hereto as Exhibit 3 is a true and correct copy of a letter written by Blaire Fensterstock from the Fensterstock & Partners LLP law firm to Mr. Thomas Rufer, liquidator of AWSC.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 15th day of October, 2003, at San Diego, California.



HELEN J. HODGES

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FILED _____ LODGED _____
RECEIVED _____ ENTERED _____

AUG 31 1990

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY _____ DEPUTY

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AUG 30 1990

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY _____ DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

In re M.D.C. HOLDINGS SECURITIES
LITIGATION

) Master File No.
) CV 89-0090 E (BTM)

This Document Relates To:

) CLASS ACTION

ALL ACTIONS.

) DATE: August 29, 1990
) TIME: 10:00 a.m.
) COURTROOM: HONORABLE
HARRY R. McCUE

ORDER AWARDING CLASS ACTION COUNSEL FEES AND EXPENSES

261

1 THIS MATTER having come before the Court on the joint
2 application of Class counsel for the named plaintiffs for an
3 award of attorneys' fees and reimbursement of expenses incurred
4 in the consolidated Class Actions above-captioned, and no
5 objection thereto having been made the Court, having considered
6 all papers filed and proceedings conducted herein and otherwise
7 being fully informed in the premises and good cause appearing
8 therefor, it is hereby ORDERED, ADJUDGED AND DECREED that:

9 1. This Court has jurisdiction over the subject matter of
10 this litigation, all actions within this litigation and over all
11 parties, including their counsel, to this litigation, including
12 all members of the certified class.

13 2. This Court hereby awards Class Action counsel
14 attorneys' fees in the amount of 30% of the Settlement Fund, or
15 \$4,980,000 in cash, together with the interest earned thereon
16 from December 8, 1989.

17 3. This Court hereby awards Class Action counsel expenses
18 incurred in the aggregate amount of \$714,826.19 together with the
19 interest earned thereon from December 8, 1989 until paid.

20 4. The Court approves the provision of the Stipulation of
21 Settlement which provides for the establishment of a \$1 million
22 fund to pay the actual expenses incurred in the further
23 prosecution of the litigation against the Non-Settling
24 Defendants.

1 5. The Court retains jurisdiction to consider, upon proper
2 application, the award of additional fees and expenses incurred
3 by plaintiffs' counsel.

4 DATED: August 30, 1990


HONORABLE HARRY R. MCCUE
UNITED STATES MAGISTRATE

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RICHARD W. WIERING, CLERK

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

In re SOFTWARE TOOLWORKS INC.
SECURITIES LITIGATION

Master File No.
C-90-2906-FMS

This Document Relates To:

CLASS ACTION

ALL ACTIONS.

DATE: August 28, 1991

TIME: 11:00 a.m.

COURTROOM: THE HONORABLE
FERM N. SMITH

ORDER REIMBURSING EXPENSES

1 THE MATTER having come before the court on the joint
2 application of class counsel for the named plaintiffs for
3 reimbursement of expenses incurred in the consolidated class
4 actions above-captioned, and no objection thereto having been made,
5 the court, having considered all papers filed and proceedings
6 conducted herein and otherwise being fully informed in the premises
7 and good cause appearing therefore, it is hereby ORDERED, ADJUDGED
8 AND DECREED that:

9 I. This court has jurisdiction over the subject matter of
10 this litigation, all actions within this litigation and over all
11 parties, including their counsel, to this litigation, including all
12 members of the certified class.

13 II. This court hereby awards plaintiffs' counsel expenses
14 incurred in the aggregate amount of \$1,072,620.26 together with the
15 interest earned thereon from June 19, 1991 until paid.

16 III. Subject to an accounting and final approval by the court,
17 plaintiffs' counsel may use up to \$1.5 million from the settlement
18 fund to pay the actual expenses incurred in the further prosecution
19 of the litigation against the Non-Settling Defendants.

20 IV. The court retains jurisdiction to consider, upon proper
21 application, the award of counsel fees and additional expenses
22 incurred by plaintiffs' counsel.

23 DATED: ~~August 10, 1991~~

24 *Sept. 10, 1991*

[Signature]
25 HONORABLE PETER H. SMITH
UNITED STATES DISTRICT JUDGE

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C.M.

ORDER REIMBURSHING EXPENSES

FENSTERSTOCK & PARTNERS LLPBLAIR C. FENSTERSTOCK
CLIFFORD JAMES30 WALL STREET
NEW YORK, NY 10005
(212) 785-4100
FAX (212) 785-4040**MULTIPLE RECIPIENT FAX COVER SHEET**

To:	Company:	Fax #:	Confirmation Tel. #:
Mr. Thomas Rufer, Liquidator	AWSC Société Coopérative	011-41-22-799-4401	
William S. Lerach, Esq.	Milberg Weiss Bershad Hynes & Lerach LLP	619-231-7423	
Keith F. Park, Esq.	Milberg Weiss Bershad Hynes & Lerach LLP	619-231-7423	
Elliott Geisinger, Esq.	Schellenburg Wittmer	011-41-22-707-8001	011-41-22-707-8000
Sender:	Blair C. Fensterstock, Esq.	Reference:	1252-01
Date:	September 4, 2003	Number of Pages (including cover page):	3

Message (as applicable) :

THIS MESSAGE AND ITS ATTACHMENTS ARE INTENDED TO BE RECEIVED ONLY BY THE ADDRESSEE ABOVE. If you are not the addressee and you are not responsible for delivering messages to the addressee, you have received it by mistake. No privilege or confidence is intended to be waived by the facsimile transmission of this message. We request you not to review or copy this material. Please notify us by collect call to our facsimile operator at 212/785-4100 Ext. 223 so that we may arrange for it to be returned and to reimburse you for the expense of returning it. Thank you for your help.

Facsimile Operator : _____

Time Sent : _____ a.m. / p.m.
Faxcover-multi.frm

FENSTERSTOCK & PARTNERS LLP

30 WALL STREET
NEW YORK, NY 10005
(212) 785-4100
FAX (212) 785-4040
WWW.FENSTERSTOCK.COM

September 4, 2003

*BY DHL COURIER AND
BY FACSIMILE (011-41-22-799-4401)*

AWSC Société Coopérative, en liquidation
Route de Pré-Bois 29
1215 Genève 15
SWITZERLAND
Attention of Mr. Thomas Rufer, Liquidator

Dear Mr. Rufer:

We refer to our letters of August 18, 25 and 28, 2003, to which we have received no response or reaction to date. We also suggest you review the letters sent to Mr. Aldo Cardoso at Andersen Worldwide SC by the U. S. Retired Partners Group dated April 8 and 19, 2002.

In particular, you have not indicated whether AWSC, en liquidation ("AWSC") intends to pay the amounts claimed, dispute the claims of our clients, or seek a settlement. In view of the total amount of the claims, which approaches US\$ 200,000,000.00, we cannot understand your silence.

Should AWSC dispute our clients' claims, we emphasize that, under Swiss law, more specifically Articles 913(1) and 744(2) of the Swiss Code of Obligations ("CO"), the liquidator of a "*société coopérative*" who is faced with claims that are disputed by the company must either pay the amount of the disputed claim into escrow or provide adequate security, unless the distribution after liquidation of the liquidated company's assets is postponed pending the resolution of the dispute. Please indicate your intentions in that respect.

We hereby reiterate that, should you fail to comply with the duties resulting from the above-mentioned statutory provisions and/or the legal provisions cited in our letter of August 28, 2003 (namely Articles 743(1) and (2), 913(1) and 903 CO, which compel the liquidator to seek bankruptcy protection if the company's liabilities exceed its assets), we

AWSC Société Coopérative, en liquidation
Attention of Mr. Thomas Rufer, Liquidator
September 4, 2003
Page 2

shall hold you personally liable for any losses that could result from such failure, pursuant to 917(1) CO.

As for the recently reported settlement between AWSC and the Enron plaintiffs, you are certainly aware of the fact that, in the event of the bankruptcy of AWSC (which is far from unlikely under the circumstances), any payments that AWSC may have made or may make in the future under that settlement are open to "revocation" under the provisions of Articles 285-288 of the Swiss Federal Act on Debt Collection and Bankruptcy ("DCF"), and the entire settlement is subject to revocation by its own terms. In light of this fact, we are sending a copy of this letter to Messrs Keith F. Park and William S. Lerach, counsel for the Enron plaintiffs. More generally, we again reserve the right to take all appropriate legal action that may protect our clients' rights in connection with AWSC payments under the Enron settlement.

Sincerely,



Blair C. Fensterstock

Cc: Messrs Keith F. Park and William S. Lerach

Schellenburg Wittmer

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document entitled, DECLARATION OF HELEN J. HODGES IN SUPPORT OF FINAL APPROVAL OF PARTIAL SETTLEMENT has been served by sending a copy via electronic mail to serve@ESL3624.com on this 16th day of October, 2003.

I further certify that a copy of the above-mentioned document has been served via overnight mail on the following parties, who do not accept service by electronic mail on this 16th day of October, 2003.

Carolyn S. Schwartz
United States Trustee, Region 2
33 Whitehall Street, 21st Floor
New York, NY 10004

I also certify that a copy of the above-mentioned document has been served via overnight mail on the parties listed on the attached "Objector Service List" on this 16th day of October, 2003.

Deborah S. Granger

DEBORAH S. GRANGER

OBJECTOR SERVICE LIST

October 15, 2003

<p>Stuart Yoes THE YOES LAW FIRM, LLP 3535 Calder Avenue, Suite 235 Beaumont, TX 77726-7584 409/833-2352 409/828-5577 (fax)</p> <p>Attorneys for Objectors RINIS</p>	<p>Frank H. Tomlinson PRITCHARD, McCALL; & JONES, LLC 505 N. 20th Street, Suite 800 Birmingham, AL 35203 205/328-9190 205/458-0035 (fax)</p> <p>Attorneys for Objectors RINIS</p>
<p>Edward W. Cochran 2872 Broxton Road Shaker Heights, OH 44120 216/751-5546 216/751-6630 (fax)</p> <p>Attorney for Objectors RINIS</p>	<p>N. Albert Bacharach Jr. 115 N.E. Sixth Avenue Gainesville, FL 32601-6592 352/378-9859 352/338-1858 (fax)</p> <p>Attorney for Objectors RINIS</p>
<p>Paul S. Rothstein 626 N.E. First Street Gainesville, FL 32601 352/376-7650 352/374-7133 (fax)</p> <p>Attorney for Objectors RINIS</p>	<p>Maureen McGuirl FENSTERSTOCK & PARTNERS LLP 30 Wall Street, 9th Floor New York, NY 10005 212/785-4100 212/785-4040 (fax)</p> <p>Attorneys for Objectors James H. Allen, Jr., Burton W. Carlson, Jr., Michael T. DeFreece, Marcia A. DeFreece, Andrew E. Krinock, Phyllis A. Krinock, Partcom Limited Partnership, Reed Partners, L.P., formerly known as Reed Family Ltd. Partnership, F. Walker Tucei, June P. Tucei, Romand H. Uhing, Alvera A. Uhing and Viets Family Associates, LLP</p>
<p>Lawrence W. Schonbrun LAW OFFICES OF LAWRENCE W. SCHONBRUN 86 Eucalyptus Road Berkeley, CA 94705 510/547-8070</p> <p>Attorneys for Objector Brian Dabrowski</p>	<p>Richard C. Bauerle 30 Greenbriar Lane Ottumwa, IA 52501-9061</p> <p>Objector</p>
<p>Arnold Gregg 4445 Forest Glen Road Anaheim Hills, CA 92807</p> <p>Objector</p>	